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EXAMINER

WANG, HARRIS C

ART UNIT

PAPER NUMBER

2439

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DELIVERY MODE

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

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|--|--|---|--|
| <p align="center"><b>Advisory Action</b><br/><b>Before the Filing of an Appeal Brief</b></p> | <p><b>Application No.</b><br/>10/748,008</p> | <p><b>Applicant(s)</b><br/>VAN BRABANT, LUC</p> |  |
|  | <p><b>Examiner</b><br/>HARRIS C. WANG</p>    | <p><b>Art Unit</b><br/>2439</p>                 |  |

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 21 October 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### NOTICE OF APPEAL

2. ☒ The Notice of Appeal was filed on 21 October 2009. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

#### AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: 29,31-32-34.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: 6,7,11-15,22-28, 30, 33.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

#### AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

#### REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.  
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_.  
13. ☐ Other: \_\_\_\_\_.

/Kambiz Zand/  
Supervisory Patent Examiner, Art Unit 2434

Continuation of 11. does NOT place the application in condition for allowance because: Regarding the Applicants arguments on pg. 12 says "This "pending list" is shown in Smithson's FIG. 3 for the case of on-access requests rather than on-demand (Smithson, Col. 5, lines 5-22). In these cited lines Smithson writes "In the case of on-demand accesses, the requestor column would be replaced by an Owner or Creator column." That is why the Examiner cited Figure 2 to show the on-demand and the "chunks" in Figure 3. The Applicant argues "the scan requests...are not distributed to a plurality of virus checkers." Figure 5 of Smithson shows the Anti-virus system which comprises a plurality of components which may be broadly interpreted as a "plurality of virus checkers"

Regarding the arguments on page 13 of Remarks, Applicant argues "Figure 2 of Smithson shows that one on-demand or on-access scan request is received in step 10 and then written into the virus scan request queue...Thus, individual scan requests and not chunks are placed on the virus scan requests." Similarly the Applicant also argues in pg. 14 of Remarks "In short, it is not sufficient to simply consider multiple on-demand requests to be on the queue of Smithson as a chunk. The fact that multiple requests of the same type might be found together on Smithson's queue at any given time does not necessarily imply that these multiple requests were processed in the specific fashion recited by the ...claim...'grouping...and placing the chunks onto a queue." The Examiner disagrees. As long as there are a plurality of on-demand scan requests together that were specifically placed on the scan queue for any reason, the limitations of claim 6 are covered as there are no further explanations of how the grouping is done.

The Applicants arguments regarding pgs. 16-24 are similar to the arguments already addressed in the Final Office Action.